

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Applications

of

BENSON IRON ORE TRUST

DETERMINATION

for refund of franchise taxes under  
Article 9-A of the Tax Law for the  
period June 8, 1961 through December  
31, 1961, and calendar year 1962.

Benson Iron Ore Trust having filed applications for refund of franchise taxes under Article 9-A of the Tax Law, and the facts having been agreed to by Stipulation of Facts, dated March 16, 1970, executed by Edward H. Best, Counsel of the State Tax Commission, and by Eugene P. Souther, Counsel of the taxpayer, and the parties having waived the right to present any further testimony at a formal hearing under Section 214 of the Tax Law,

Upon all the stipulated facts and upon the entire record, it is hereby found:

(1) Benson Iron Ore Trust was created by declaration of trust dated June 8, 1961 entered into by and between Benson Iron Ore Corporation and three individuals as trustees. On November 19, 1959 the stockholders of Benson Iron Ore Corporation, a New York corporation, adopted a plan of complete liquidation. Implementation of the plan was delayed by litigation, but in June 1961 some property of the corporation was sold, a final cash distribution was made to the stockholders, and all other property, except for amounts reserved for creditors, was transferred to the Trustees. Each of the stockholders of the corporation received a certificate representing his interest in the Trust. The number of units of beneficial interest issued and outstanding at all times since the creation

of the Trust has been 260,263, which is also the number of shares of stock of Benson Iron Ore Corporation that was outstanding at the time of its liquidation. Throughout the taxable periods in question there were approximately 125 holders of record of the certificates of beneficial interest.

(2) The property transferred to the Trustees consisted of real property situated in St. Lawrence County, New York, subject to a long-term mining lease to Jones & Laughlin Steel Corporation, and part of the receivables from such tenant under that lease. The property of the Trust consisted entirely of such real property, bank accounts in New York and, from time to time, receivables under the lease. The Trustees were engaged solely in collecting and distributing the mining royalties from the lease.

(3) The Internal Revenue Service ruled that the powers granted to the Trustees were ministerial rather than managerial and the Trust would not constitute an association taxable as a corporation for federal income tax purposes. It also ruled that the Trust was a revocable one and should be disregarded for federal income tax purposes with its income and deductions being reportable by its certificate holders in proportion to their respective interests.

(4) Taxpayer paid a tax of \$15,287.56 for the period June 8, 1961 through December 31, 1961 based on 5½% of entire net income of \$277,955.59, and \$20,099.25 for 1962 based on 5½% of entire net income of \$365,440.89.

(5) The alternative tax computation of one mill on total business capital would produce a tax of \$3,013.40 for the period June 8, 1961 through December 31, 1961 on capital of \$3,013,403.80, and a tax of \$4,812.64 for 1962 on capital of \$4,812,635.22.

(6) Taxpayer contends that the Trust is not subject to the corporate franchise tax because it is not doing business in New York State, and in any event, if it is taxable, the tax should be based on total business capital on the theory that the Trust has no taxable income for federal purposes and therefore has no entire net income for franchise tax purposes.

(7) Section 208.1 of the Tax Law provides:

"The term 'corporation' includes a joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificate or other written instrument;"

(8) Section 209.1 of the Tax Law, in effect for 1961 and 1962, provides in part:

"2. The holding of real property in this state shall be deemed to be doing business in this state within the meaning of this article."

(9) Section 3.11 of the Ruling of the State Tax Commission, promulgated on March 14, 1962, provides:

"Definition of Entire Net Income (Law Sec. 208.9).  
a. Entire net income means total net income from all sources, and is presumed to be the same as the taxable income which the taxpayer is required to report to the United States Treasury Department for purposes of the Federal income tax imposed by chapter 1 of the Internal Revenue Code \* \* \*. However, neither the taxable income actually reported nor the taxable income actually determined for Federal income tax purposes is necessarily the same as the taxable income required to be reported for Federal income tax purposes under the provisions of the Internal Revenue Code. Ordinarily the determination of the Commissioner of Internal Revenue is followed, but it is not binding on the State Tax Commission."

"b. 'Federal taxable income' is the starting point in the computation of entire net income. This means taxable income as defined in section 63 of the Internal Revenue Code, not any special type of taxable income such as 'investment company taxable income' or 'real estate investment trust taxable income'."

(10) Section 63 of the Internal Revenue Code defines taxable income as:

"(a) General Rule.—\*\*\* The term 'taxable income' means gross income, minus the deductions allowed by this chapter \* \* \*."

Based upon the foregoing, it is hereby  
**DETERMINED:**

(A) That Benson Iron Ore Trust is taxable as a corporation, pursuant to sections 208.1 and 209.1 of the Tax Law, since interest therein is evidenced by certificates and it is doing business by virtue of its ownership of real property located in New York.

(B) That entire net income for franchise tax purposes is based on taxable income required to be reported for Federal income tax purposes in accordance with section 63 of the Internal Revenue Code.

(C) That Benson Iron Ore Trust earns the items which are taken into consideration in computing taxable income under section 63 of the Internal Revenue Code and in computing entire net income under section 3.11 of Ruling of the State Tax Commission.

(D) That the taxes of \$15,287.56 for the period June 8, 1961 through December 31, 1961, and \$20,099.25 for 1962, based on entire net income, are affirmed as paid, and the applications for refund are denied.

(E) That the aforesaid taxes do not include taxes or other charges which are not legally due.

Dated: Albany, New York

this *2<sup>nd</sup>* day of *March* 1971

**STATE TAX COMMISSION**

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Commissioner

  
\_\_\_\_\_  
Commissioner

*Benson Iron Ore  
Corp. Tax  
1971*

March 1, 1971

James C. Guigley, Esq.  
Seward & Kissel  
25 Broad Street  
New York, New York 10004

Re: Benson Iron Ore Trust

Dear Mr. Guigley:

Following our discussion, I had the determination in the above case re-reviewed by the Corporation Tax Bureau, the Law Bureau and the Tax Commission. All are of the opinion that the determination is correct. You will receive a formal notice of the determination shortly.

Sincerely,

/s/

HORMAN GALLMAN  
Commissioner

cc-Mr. Best  
Mr. Doran

HR/jvp

THE UNITED STATES OF AMERICA  
DO hereby certify that  
[Name] is a [Title]  
of the [Organization]

and that [Name] is a [Title]  
of the [Organization]  
and that [Name] is a [Title]  
of the [Organization]  
and that [Name] is a [Title]  
of the [Organization]

WITNESSED my hand and  
the Great Seal of the United States  
this [Date] day of [Month], 19[Year]

JOHN F. KENNEDY  
President

SECRET